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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 22

[WT Docket Nos. 12-40, 16-138; RM-11510, RM-11660; FCC 18-92]

Cellular Service, Including Changes in Licensing of Unserved Area

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) adopts revised rules governing the 800 MHz Cellular Radiotelephone (Cellular) Service and other commercial mobile radio services (CMRS) governed by Part 22 of the Commission's rules. These steps to remove unnecessary regulatory burdens for Cellular Service and other Part 22 licensees will free up more resources for investment in new technologies and greater spectrum efficiency to meet increasing consumer demand for advanced wireless services. Specifically, the Commission modernizes its rules by eliminating several Part 22 recordkeeping and reporting obligations that were adopted more than two decades ago—obligations for which there is no longer a benefit to outweigh the compliance costs and burdens imposed on licensees. It also eliminates certain Cellular Service-specific rules that are no longer necessary. These reforms will provide Cellular Service and other Part 22 licensees with enhanced flexibility and advance the goal of ensuring more consistency in licensing across commercial wireless services, while taking into account unique features of each service. With this document, the Commission terminates the Cellular Reform proceeding in WT Docket No. 12-40, including RM Nos. 11510 and 11660.

DATES: Effective **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, except for the amendment to 47 CFR 22.303, which contains modified information collection requirements that have not yet been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. The Commission will publish a document in the Federal Register announcing the effective date of that amendment.

FOR FURTHER INFORMATION CONTACT: Nina Shafran, (202) 418-2781, in the Mobility Division, Wireless Telecommunications Bureau. She may also be contacted at (202) 418-7233 (TTY).

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Third Report and Order in the Cellular Reform proceeding (Cellular Third R&O), WT Docket No. 12-40, RM Nos. 11510 and 11660, FCC 18-92 adopted July 12, 2018 and released July 13, 2018. The full text of the Cellular Third R&O, including all Appendices, is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street SW, Room CY-A157, Washington, DC 20554, or by downloading the text from the Commission's website at <https://docs.fcc.gov/public/attachments/FCC-18-92A1.pdf>. Alternative formats are available for people with disabilities (Braille, large print, electronic files, audio format), by sending an e-mail to FCC504@fcc.gov or calling the Consumer and Government Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

Synopsis

I. Background

1. In a Second Report and Order released March 24, 2017, in the Cellular Reform proceeding (Second R&O), the Commission modernized numerous Cellular technical rules, including outdated radiated power and related rules, to permit power measurement using power spectral density. These changes facilitate the use of Cellular spectrum to provide advanced mobile broadband services, such as 4G long term evolution (LTE), while protecting public safety communications from increased potential for unacceptable interference. The Second R&O also revised rules to further eliminate unnecessary filings and other regulatory burdens for Cellular licensees. The Commission's reforms resulted in Cellular Service rules more akin to the flexible licensing schemes found in other similar mobile services, such as the Broadband Personal Communications Service (PCS), the commercial service in the 700 MHz band, the 600 MHz Service, and the Advanced Wireless Services (AWS), to help ensure that carriers are treated similarly regardless of technology choice.

2. To build on the adopted reforms and to respond to certain submissions by commenters in the Commission's 2016 Biennial Review of Telecommunications Regulations proceeding (WT Biennial

Review proceeding), the Commission also released a companion Second Further Notice of Proposed Rulemaking (Second Further Notice) in the Cellular Reform proceeding on March 24, 2017. In the Second Further Notice, the Commission proposed and sought comment on additional reforms of its Part 22 rules governing the Cellular Service and other Part 22 Public Mobile Services (PMS). The Commission also invited comment on whether other measures could be taken to allow Part 22 licensees to benefit from the same level of flexibility available to other commercial wireless licensees. In that context, the Commission raised the possibility of relocating—to Part 27 of the Commission’s rules—certain Part 22 rules, as well as the Part 24 PCS rules and other rules governing geographically licensed wireless services.

3. In response to the Second Further Notice, interested parties submitted comments, reply comments, and ex parte letters. The specific reforms adopted by the Commission in the Third R&O are described below.

II. Elimination of Unnecessary Rules

A. Deletion of 47 CFR 22.301 and 22.303 Concerning Station Inspection, Retention of Station Authorizations

4. Commission Rules 22.301 and 22.303 collectively require that hard copies of license authorizations and other records be maintained by all Part 22 licensees for each station and that such records and the station itself be made available for inspection upon request. The Commission finds that both rules have outlived the usefulness they may have had in the past and now impose administrative burdens without any corresponding public benefit.¹ Because the Commission no longer routinely mails printed authorizations, licensees cannot comply with the hard-copy requirement unless they themselves print, or request that the Commission’s Wireless Telecommunications Bureau print and mail, an authorization every time an application is granted. Such a requirement does not serve the public interest. The Commission’s Universal Licensing System (ULS) is available electronically at all times: licensees have access in ULS to their official authorizations, while members of the public have access in ULS to

¹ The Commission retains in any event its general station inspection authority under the Communications Act of 1934, as amended. See 47 U.S.C. 303(n).

reference copies reflecting the most up-to-date information concerning all authorizations. The movement away from site-specific filings renders on-site comparison of paper records and operating parameters unnecessary and largely infeasible. Moreover, the Commission has not imposed the recordkeeping and station inspection requirements of Rules 22.301 and 22.303 on licensees in competing wireless services governed by Parts 24 and 27 of its rules. For these reasons, the Commission deletes 47 CFR 22.301 and 22.303.

B. Deletion of 47 CFR 22.325 Concerning Control Points

5. Commission Rule 22.325 requires that “[e]ach station in the Public Mobile Services [] have at least one control point and a person on duty who is responsible for station operation.” The Commission finds that this rule no longer serves the public interest; it is technologically obsolete, as licensees today routinely monitor their network operations by automatic and remote mechanisms. As with Rules 22.301 and 22.303, discussed above, there is no similar provision governing competing CMRS in the Commission’s Part 24 or Part 27 rules. Part 22 licensees should have the same flexibility as Part 24 and Part 27 commercial wireless licensees to determine how to manage their networks to ensure compliance with the Commission’s rules, including how best to avoid interference. Accordingly, the Commission deletes 47 CFR 22.325.

C. Deletion of 47 CFR 22.321 Concerning Equal Employment Opportunity Programs and Reports

6. Commission Rule 22.321 sets forth licensee obligations for equal employment opportunity (EEO) programs and policies to assure nondiscriminatory practices in recruitment, placement, promotion, and other areas of employment practices. Paragraph (c) of the rule requires all Part 22 licensees (i.e., PMS licensees), regardless of their size, to submit an annual report to the Commission indicating whether any EEO complaints have been filed at the federal, state, or local level against the licensee. Commission Rule 90.168, titled Equal Employment Opportunities, contains the same provisions as Rule 22.321. This includes paragraph 90.168(c) which, like 22.321(c), requires that a complaints report be filed annually regardless of the licensee’s size. Rule 90.168 states that it applies to all CMRS

(which includes the Part 22 PMS), and thus it entirely subsumes Rule 22.321. Given that all CMRS licensees are subject to 47 CFR 90.168, including 90.168(c), 47 CFR 22.321 is duplicative and, accordingly, the Commission deletes 47 CFR 22.321 in its entirety. As to the Part 90 reporting requirement, the Commission did not propose to remove that requirement, nor did any commenters suggest doing so. Part 90 rules are therefore beyond the scope of this proceeding and the Commission declines at this time to eliminate the complaints reporting requirement in 47 CFR 90.168.

D. Deletion of 47 CFR 22.927 Concerning Responsibility for Mobile Stations, and 47 CFR 22.3 Concerning Authorization Required

7. Under 47 CFR 22.927, Cellular licensees are “responsible for exercising effective operational control over mobile stations receiving service through their Cellular systems,” including mobile stations operated by subscribers to a different Cellular licensee. Pursuant to 47 CFR 1.903(c), the “[a]uthority for subscribers to operate mobile or fixed stations in the Wireless Radio Services [WRS],” which includes the Cellular Service, “is included in the authorization held by the licensee providing service to them.” Thus, when a WRS licensee, as the host carrier, provides service to a subscriber of another carrier (i.e., a subscriber that is outside its own provider’s service area), the subscriber’s use of his or her mobile phone to access the spectrum falls under that host carrier’s authorization. Rule 1.903(c) thus captures the purpose underlying Rule 22.927, albeit with less detail. While the detailed provision in Rule 22.927 regarding the host carrier’s responsibility under its authorization may have been warranted when the Cellular Service was in its nascency, the Commission finds that this additional rule is unnecessary these many decades later. Moreover, the rule creates asymmetry, as the rules for commercial wireless services established much later than the Cellular Service—such as PCS and AWS—do not have a counterpart to 47 CFR 22.927. Consistent with a key goal in this proceeding to eliminate unnecessary asymmetric regulations, the Commission deletes 47 CFR 22.927.

8. The Commission concludes that a related legacy rule that applies to all Part 22 licensees, 47 CFR 22.3, is also no longer necessary. This rule specifies that PMS stations must be used and operated only in accordance with applicable Commission rules and only with a valid authorization

granted by the Commission. It further specifies that authority for subscribers to operate mobile or fixed PMS stations is included in the authorization of the licensee providing service to them. The same provisions are included in the later-adopted 47 CFR 1.903, which applies more broadly to numerous wireless services in addition to the PMS. Accordingly, the Commission deletes 47 CFR 22.3 as duplicative.

III. Possible Relocation of Rules to Part 27

9. The Commission sought comment in the Second Further Notice on whether to migrate the Part 22 Cellular and Part 24 PCS rules to Part 27, and on possible reorganization of the Part 27 rules, either in this proceeding or by initiating a separate rulemaking. In addition, the Commission noted that there are other geographically-licensed, auctioned services that are not included in Part 27, including Public Coast (Part 80), Specialized Mobile Radio (SMR), Location and Monitoring, and 220 MHz (Part 90), and 218-219 MHz (Part 95), and that of these, only SMR is used today by wireless carriers to provide services directly to consumers nationwide. The Commission sought comment on whether it should move the Part 22 Cellular and Part 24 PCS rules to Part 27 in conjunction with moving those other service rule parts to Part 27 as well.

10. Only two commenters addressed the issue, and one of them opposes the idea, highlighting the fact that disparate types of operations found in certain rule parts would make it challenging to consolidate Part 22 Cellular, Part 24 PCS, and other wireless mobile service rules into a single set of regulations. Such an exercise would entail painstaking review of numerous rules to determine those that can be consolidated and those that must be retained for individual services. In the absence of strong support on the record for this endeavor, which would require a significant investment of staff resources to complete, the Commission declines to pursue the issue at this time.

IV. Other Regulations Raised by Commenters

11. In response to the Commission's query in the Second Further Notice as to whether any other Part 22 rules are ripe for removal in light of changed technology, electronic licensing/recordkeeping, or other modernizations that have occurred over the past two decades, a few

commenters requested deletion of three Part 22 rules. These rules and the Commission's decisions not to delete them at this time are explained below.

12. 47 CFR 22.921—911 Call Processing Procedures. One commenter argued that Rule 22.921, pursuant to which certain Cellular Service mobile telephones that are capable of operating in the analog mode must incorporate a special procedure for processing 911 calls, is now obsolete because, among other reasons, it is unaware of any carrier that still offers analog devices or operates an analog Cellular system. Commission data show that, on the contrary, some carriers are still using analog technology in the Cellular Service band—and Rule 22.921 ensures that 911 calls get through in those circumstances. Accordingly, the Commission concludes that deletion of 47 CFR 22.921 would not serve the public interest and declines to take such action in this proceeding

13. 47 CFR 22.925—Prohibition on Airborne Operation of Cellular Telephones. Two commenters raised issues regarding the use of Cellular Service spectrum for communications to, from, and onboard aircraft and argued that Rule 22.925, which prohibits the operation of Cellular Service telephones aboard “airplanes, balloons or any other type of aircraft . . . while such aircraft are airborne . . . ,” should be eliminated, or at least modified. The issues raised by the two commenters are being dealt with in a separate Commission proceeding that remains open (WT Docket No. 13-301), and the Commission therefore declines to consider the issues in this Cellular Reform proceeding.

14. 47 CFR 22.143(a)—Commencement of Construction Prior to Grant of Application. Rule 22.143 permits applicants to begin construction of PMS facilities prior to grant of their applications; paragraph (a) of the Rule specifies that such construction may begin “35 days after the date of the Public Notice listing the application for that facility as acceptable for filing.” One commenter argues that paragraph (a) of the Rule should be deleted, asserting that comparable provisions do not exist for other wireless services, and that other portions of the Rule put applicants on notice that they assume the risk of constructing prior to grant. The Commission disagrees that the provision should be deleted, noting that the same Public-Notice-plus-35-day period is specified in 47 CFR 90.169 of Commission rules for several

other commercial wireless radio services.² In addition, pre-grant construction under Rule 22.143 is subject to several conditions, including, among others, that no petitions to deny or mutually exclusive (competing) applications have been filed. When the Commission reduced the waiting period from the original 60-day and 90-day post-Public Notice periods to the existing Public-Notice-plus-35-days provision, it agreed that applicants should know within that timeframe whether any petition to deny or competing application had been filed, and retained these conditions to disallow construction when it cannot be reasonably certain of being able to grant the application. The Commission has also recognized that construction of PMS facilities entails not only the financial risk to the applicant, but also environmental and other consequences affecting the public, and it would not be in the public interest to allow construction until the Commission is reasonably certain that the facilities can be authorized. In a similar vein, it is in the public interest to minimize the Commission's risk of having to expend taxpayer resources to issue notification to the applicant, pursuant to 47 CFR 22.143(b), to stop construction. For all these reasons, the Commission declines to delete 47 CFR 22.143(a) at this time.

V. Procedural Matters

15. Paperwork Reduction Act Analysis. One rule amendment adopted in the Third R&O – specifically, 47 CFR 22.303, contains modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Pub. L 104-13. That rule amendment will be submitted to OMB for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies will be invited to comment on the modified information collection requirements. In addition, the Commission notes that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 USC 3506(c)(4), the Commission previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees. The Commission has assessed the effects on small business concerns of the

² The Commission also notes that, for applicants for licenses awarded by competitive bidding, which includes commercial wireless services such as PCS and AWS, the Commission has also established a waiting period, tailored to our competitive bidding process: pre-grant construction is permitted only upon release of the Public Notice listing the post-auction long-form application for that facility as acceptable for filing (by which time, mutual exclusivity has been eliminated and the Commission is reasonably certain that the application can be granted). See 47 CFR 1.2113.

rule changes it is adopting by this Third R&O and finds that businesses with fewer than 25 people will benefit from being subject to fewer recordkeeping, reporting, and compliance burdens.

16. Congressional Review Act. The Commission will send a copy of this Third R&O to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

17. Final Regulatory Flexibility Analysis. The Regulatory Flexibility Act of 1980 (RFA) requires that an agency prepare a regulatory flexibility analysis for notice and comment rulemakings, unless the agency certifies that “the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.” Accordingly, the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA), set forth in Appendix B of the Third R&O, concerning the possible impact of the rule changes.

18. People with Disabilities. To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

VI. Ordering Clauses

19. Accordingly, IT IS ORDERED, pursuant to sections 1, 2, 4(i), 4(j), 7, 301, 303, 307, 308, 309, and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 154(j), 157, 301, 303, 307, 308, 309, and 332, that this THIRD REPORT AND ORDER in WT Docket No. 12-40 IS ADOPTED.

20. IT IS FURTHER ORDERED that the THIRD REPORT AND ORDER SHALL BE EFFECTIVE **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

21. IT IS FURTHER ORDERED that Part 22 of the Commission’s rules, 47 CFR Part 22, IS AMENDED as specified in Appendix A of the THIRD REPORT AND ORDER, effective **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]** except as

otherwise provided herein.

22. IT IS FURTHER ORDERED that the amendment adopted in the THIRD REPORT AND ORDER, and specified in Appendix A of the THIRD REPORT AND ORDER, to 47 CFR 22.303, which contains new or modified information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act, WILL BECOME EFFECTIVE after the Commission publishes a document in the Federal Register announcing such approval and the relevant effective date.

23. IT IS FURTHER ORDERED that this Cellular Reform proceeding in WT Docket No. 12-40, including RM Nos. 11510 and 11660, IS HEREBY TERMINATED.

24. IT IS FURTHER ORDERED, pursuant to Section 801(a)(1)(A) of the Congressional Review Act, 5 U.S.C. 801(a)(1)(A), that the Commission SHALL SEND a copy of the THIRD REPORT AND ORDER to Congress and to the Government Accountability Office.

25. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of the THIRD REPORT AND ORDER, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 22

Communications common carriers, Reporting and recordkeeping requirements.

FEDERAL COMMUNICATIONS COMMISSION.

Marlene Dortch,
Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 22 as follows:

PART 22—PUBLIC MOBILE SERVICES

1. The authority citation for part 22 continues to read as follows:

Authority: 47 U.S.C. 154, 222, 303, 309 and 332.

§ 22.3 [Removed and Reserved]

2. Section 22.3 is removed and reserved.

§ 22.301 [Removed and Reserved]

3. Section 22.301 is removed and reserved.

§ 22.303 [Removed and Reserved]

4. Section 22.303 is removed and reserved.

§ 22.321 [Removed and Reserved]

5. Section 22.321 is removed and reserved.

§ 22.325 [Removed and Reserved]

6. Section 22.325 is removed and reserved.

§ 22.927 [Removed and Reserved]

7. Section 22.927 is removed and reserved.

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